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The Commission of the European Communities

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

19 *In re*

20 Application Of

21 MICROSOFT CORPORATION

22 Applicant.

) Case No. 06-80038 JF (PVT)
)
) **DECLARATION OF ELIZABETH I.**
) **ROGERS IN SUPPORT OF THE**
) **MEMORANDUM OF THE COMMISSION**
) **OF THE EUROPEAN COMMUNITIES IN**
) **OPPOSITION TO MICROSOFT**
) **CORPORATION'S OBJECTIONS TO**
) **MAGISTRATE'S ORDER**

) Date: To Be Set
) Time: To Be Set
) Place: Courtroom 3, 5th Floor

) The Hon. Jeremy D. Fogel

1. I am an attorney with the law firm Wilmer Cutler Pickering Hale and Dorr LLP and a member in good standing of the bars of the State of California and of this court. I have personal knowledge of the facts stated in this declaration, and if called as a witness, I could and would testify competently thereto.

2. Attached as Exhibit A is a true and correct copy of Microsoft Corporation's Reply to Response of Novell, Inc.

3. Attached as Exhibit B is a true and correct copy of Council Regulation 1/2003 (OJ No L 1, 4.1.2003).

4. Attached as Exhibit C is a true and correct copy of the Judgment of the Court of February 13, 1979 in Case 85/76, *Hoffmann-La Roche & Co. AG v. Commission* [1979] ECR 461.

5. Attached as Exhibit D is a true and correct copy of the Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, and Articles 53, 54 and 57 of the EEA Agreement and Regulation (EC) No 139/2004, OJ 2005/C 325, 22.12.2005, p. 7 ("Notice on Access to File").

6. Attached as Exhibit E is a true and correct copy of the Judgment of the Court of Justice of January 7, 2004, in Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, *Aalborg Portland*, [2004] ECR, (not yet reported).

7. Attached as Exhibit F is a true and correct copy of the Authority issued by the Commission in this matter.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 17th day of April, 2006 at Palo Alto, California.

/S/
 Elizabeth I. Rogers